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IN THE

Supreme Court of the United States

October Term, 1927

No. 11 ORIGINAL

State of Wisconsin, State of Minnesota, State of Ohio, and State of Pennsylvania, Complainants, vs. State of Illinois and Sanitary District of Chicago, Defendants. State of Missouri, State of Kentucky, State of Tennessee, State of Louisiana, State of Mississippi, and State of Arkansas, Intervening Defendants.	No. 7, Original.
State of Michigan, Complainant, vs. State of Illinois and Sanitary District of Chicago, Defendants.	No. 11, Original.
State of New York, Complainant, vs. State of Illinois and Sanitary District of Chicago, Defendants.	No. 12, Original.

Exceptions to the Report of the Special Master Taken by the State of Michigan, Complainant.

WILLIAM W. POTTER,
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Assistant Attorney General.

ROBERT SMITH COMPANY, LANSING, MICH.

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Exceptions to the Report of the Special Master Taken by the State of Michigan, Complainant.

Now comes the State of Michigan, complainant in the above entitled original cause number 11, and excepts to the report filed by Charles Evans Hughes, Esq., the

Special Master in this cause, and for cause of exception shows the following:

First: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number VII, in part as follows:

> "All of the abstractions of and requests for consent of the Secretary of War to abstract the waters of the Great Lakes-St. Lawrence system by the Sanitary District of Chicago have been for the purpose of sewage disposal and power development.
>
> "The Congress of the United States has never authorized any diversion of water from the Great Lakes-St. Lawrence watershed at Chicago through the Chicago Drainage Canal for any purpose. None of the Secretaries of war of the United States or other Federal executive officers has authorized or directed any diversion of water from the Great Lakes-St. Lawrence watershed to the Mississippi watershed by way of the Chicago Drainage Canal for purposes of navigation. All consents or permits which have been issued or granted by any of the various Secretaries of War of the United States have been granted or issued at the request of the Sanitary District of Chicago for sewage disposal purposes. All such permits have been temporary and revocable in character and conditioned that there should be no interference with or injury to navigation. They have been reluctantly granted to meet a case of alleged sanitary necessity with obvious fear that a great damage would be done to navigation and other interests."

Second: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number IX as follows:

> "From April 1, 1903, to March 3, 1925, the Sanitary District of Chicago grossly and wilfully violated all of the Permits of the Secretaries of War and asserted the right to abstract unlimited quantities

of water from the Great Lakes- St. Lawrence System without the consent and in defiance of the government of the United States and of the other states bordering on that waterway. *Exhibit 1111, R. 3360.*"

Third: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number XXXIII as follows:

"The artificial lowering of the levels of Lakes Michigan, Huron and Erie, and their connecting waters, caused by the abstraction of the waters of the Great Lakes-St. Lawrence system, by the Sanitary District of Chicago, acting as an agency of the State of Illinois, has injured all of the private and municipal water supplies of all of the communities and industries in the state of Michigan which take such water supplies from Lakes Michigan, Huron, Erie and their connecting waters, by reducing the capacity, utility and life of such intakes, by aggravating ice interference with such intakes, by increasing the amount of sand and sediment at the mouths of the intakes, which is drawn into the same, and which is particularly injurious in the case of industrial water supplies, and by increasing the cost of pumping of all of the water to the people of the communities and industries of the State of Michigan taking their water supplies from Lakes Michigan, Huron, Erie or their connecting waters. *R. 1519, 1674, 1914-1917; 2059-2061.*"

Fourth: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number XXXVI in part as follows:

"The Sanitary District of Chicago is now and has been for many years last past, abstracting large quantities of the waters of Lakes Michigan, Huron, St. Clair and Erie, which are the property of the State of Michigan in its sovereign capacity, and has

caused and is causing a recession of such waters so as to lay bare a portion of the submerged lands thereunder."

Fifth: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number XXXIX as follows:

> "The opening of the Chicago Drainage Canal and reversal of the Chicago River introduced a current into the Chicago River which was and is a substantial interference with the navigation of that stream. This interference with navigation in the Chicago River has caused a steady decline in the amount of lake traffic on the Chicago River. *EXHIBIT 102, pages 14 and 27; documents 10, 11 and 39 of exhibit 12; R. 378-379; R. 259-263; R. 265, 266; R. 255-257.*"

Sixth: It excepts to the failure of the Special Master to find in accordance with its proposed finding of fact number XLII as follows:

> "The Sanitary District of Chicago has violated the conditions of the Permit of March 3, 1925, by exceeding the limitation placed by that permit upon an instantaneous maximum diversion and by causing and continuing an unreasonable interference with navigation in the Chicago River and in all of the waters of the Great Lakes, their connecting waters and their outlet river, from St. Mary's Falls in the St. Mary's River to tidewater in the St. Lawrence River at Quebec. *Exhibit 146.*"

Seventh: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report p. 58 (u) that the Chicago River was deepened and improved, but fails to find that such deepening and

improvement was for the purposes of facilitating the abstraction of water from Lake Michigan for the purpose of sewage disposal and not for the purpose of navigation.

Eighth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report p. 81):

> "The amount mentioned in the permit is exclusive of the domestic pumpage in Chicago, which in 1924 amounted to 1274 c.f.s., in 1925 to 1338 c.f.s., and in 1926 to 1395 c.f.s."

instead of finding in accordance with the evidence that the amount of water diverted and abstracted from Lake Michigan for the domestic pumpage and use of the city of Chicago, is not returned to Lake Michigan and to the great Lakes-St. Lawrence watershed, but is permanently abstracted and diverted therefrom and into the Chicago Sanitary canal for the purpose of sewage disposal, and is permanently abstracted and diverted to the Mississippi watershed, wherefore and whereby the said waters should not be considered as exclusive of the permit but should be considered as a part of the abstraction and diversion of waters from Lake Michigan, and particularly for the purpose of considering the amount diverted under the terms of the Permit by the Secretary of War of March 3, 1925, and for the purpose of determining the number of cubic feet per second mean average, and also for the purpose of considering the number of cubic feet per second instantaneous maximum, because the said abstraction and diversion of waters occurs directly from Lake Michigan and no part thereof is returned to said lake or watershed.

Ninth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report p. 81):

> "It appears from the evidence that, up to the time of the taking of the testimony herein, the Sanitary District had substantially complied with the conditions of the Permit."

instead of finding in accordance with the evidence that the Sanitary District has not substantially complied with the conditions of the Permit of March 3, 1925 inasmuch as the evidence shows that defendants did create an unreasonable interference with navigation, and also that the program of water metering for the city of Chicago is not being, and has not been carried out as therein required, inasmuch as the evidence shows that there has been a failure upon the part of the city of Chicago to install the number of water meters necessary to bring about the reduction of the water supply of the city of Chicago as contemplated by the Permit; and the evidence also shows that the Sanitary District of Chicago has exceeded the instantaneous maximum provided under such Permit.

Tenth: It excepts to the finding of the Special Master and the reasons assigned therefor, wherein he finds (Master's Report p. 117):

> "I am unable to conclude that the injury alleged to have been sustained in relation to agriculture and horticulture has been sufficiently shown to warrant its consideration in determining the effect of a reduction of approximately six inches in lake levels, due to the Chicago diversion."

instead of finding in accordance with complainant's proposed findings of fact numbers XXXI and XXXII that:

> "The ground water table at its point of junction with the lake surface fluctuates directly with the lake surface which regulates the ground water table so that it can never fall below the level of the lake. When the lake is lowered by natural or artificial causes the ground water table immediately adjoining the lake is lowered to the same extent. * * * In the case of gravelly and sandy soils, there is a point below which the water table cannot recede without impairing or destroying the growth of crops thereon. The artificial lowering of six inches in the level of Lakes Michigan and Huron, caused by the abstraction of the waters of the Great Lakes-St Lawrence system by the Sanitary District of Chicago, acting as an agency of the State of Illinois, has lowered the water table at the point of union with Lakes Michigan and Huron, in the State of Michigan by not less than six inches. *R. 5375-5377, 5379, 1577.* About 75 per cent of the 823 miles of shore line of the State of Michigan, upon Lake Michigan, is of such a character that the artificial lowering of the water table by six inches, produced at the shore line, is continuous to substantially the same extent for a distance of from one-half to three miles back from the shore line. *R. 1110.* * * * The artificial lowering of the water table along the shore line of Lake Michigan in the State of Michigan has substantially reduced the height of water in the wells of that area and has substantially injured and contributed to the death of natural forest trees, growing in that area. * * * The artificial lowering of the water table under the lands in the State of Michigan, adjacent to the shore of Lake Michigan has inflicted a substantial injury upon, and has materially reduced the production of the cherry orchards of the State of Michigan in that area."

Eleventh: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and

the reasons assigned therefor, wherein he finds (Master's Report p. 122):

> "The complainants contend that if the water for lockage and navigation purposes of this waterway from Lake Michigan to the mouth of the Illinois River is or should be taken from the Great Lakes-St. Lawrence watershed, a diversion of less than one thousand c.f.s. of water is sufficient to supply all the needs of navigation. I am unable to so find."

instead of finding that the amount of one thousand c.f.s. of water is sufficient to supply all the needs of navigation in accordance with the evidence, and particularly in view of the adoption of the finding of the Chief of Engineers of the War Department (Master's Report p. 61):

> "That a diversion of less than one thousand c.f.s. from Lake Michigan would supply any reasonable demands of navigation from Lake Michigan to the Mississippi River, and that any greater diversion was a greater injury than benefit to navigation;"

and also the statement of the Secretary of War, (Master's Report p. 63):

> "On the other hand, the demand for the diversion of this water at Chicago is based solely upon the needs of that city for sanitation. There is involved in this case no issue of conflicting claims of navigation. The Chief of Engineers reports that so far as the interests of navigation alone are concerned, even if we should eventually construct a deep waterway from the Great Lakes to the Mississippi River over the route of the Sanitary Canal, the maximum amount of water to be diverted from Lake Michigan need actually be not over one thousand feet per second, or less than a quarter of the amount already being used for sanitary purposes in the canal."

Twelfth: It excepts to the failure of the Special Master to find in accordance with complainant's proposed finding of fact XXVI as follows:

> "There are many Canadian ports on the Great Lakes which are used by American vessels. *R. 923.* The navigable depths in these ports are affected in the same way and to the same extent as the American ports on the same lake or connecting channel."

Thirteenth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report p. 125):

> "It is not controverted that the Secretary of War had these considerations before him, on the application and hearing which resulted in the Permit of March 3rd, 1925,"

instead of finding from the evidence that the Secretary of War did not have such considerations before him concerning the effect of the diversion of the water from Lake Michigan upon the navigation of the Mississippi River at the time of the application and hearing for the permit of March 3, 1925, inasmuch as the evidence shows that no part of the authorized diversion was for the benefit of the Mississippi River, but was only made because of an assumed sanitary necessity for the sewage disposal of the Sanitary District and not otherwise; and also, because the evidence shows from the report of the Chief of Engineers (Master's Report p. 75-77) and the Permit of March 3, 1925 by the Secretary of War (Master's Report p. 77-80) and the letter of transmittal from the Secretary of War (Master's Report p. 80-81) that no such consideration was there mentioned, nor does the evidence show that the same was considered

by them in connection with the application for a permit for such diversion.

Fourteenth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report, p. 125):

> "That regulating or compensating works are feasible to offset the effect of the Chicago diversion."

instead of finding, if any finding was to be made with respect to the feasibility of regulating or compensating works:

1. That the construction of such works is solely under the control of Congress and not under the control of the defendants, nor of complainant, and when or if Congress will ever act on this matter is not known nor determined.

2. That the construction of such works is dependent upon joint action and consent of Great Britain and the United States Government, and that when or if the two Governments will ever act and consent for or to the construction of such works is not known.

3. That the complainant is not required as a matter of law to construct regulating or compensating works for the purpose of mitigating damages caused by an illegal abstraction and diversion of water constituting a public nuisance, done and created by defendants.

4. That while some of the damages caused by the illegal abstraction and diversion of water from Lake

Michigan might be mitigated by regulating or compensating works, some damages such as those to water power and other rights could not be so mitigated.

5. That the conditions of the Great Lakes-St. Lawrence waterways would be better with regulating or compensating works without abstraction or diversion of water from Lake Michigan by defendants, rather than such works with diversion.

6. That complainant is entitled to the full benefits which might be obtained by the construction of such regulating or compensating works without mitigation or diminution by the diversion or abstraction of water from Lake Michigan by defendants.

Fifteenth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds (Master's Report p. 139):

> "To secure the utmost practicable treatment of the sewage of the Sanitary District, and to reduce as rapidly as possible the diversion of water from Lake Michigan, without creating conditions which would seriously menace the health of Chicago, will require constant and expert administrative supervision, the continuous checking up of the results obtained by the installation of treatment works, and the insistence on such improved methods as from time to time will be available."

instead of finding that the authority of the Chief of Engineers and the Secretary of War, in recommending and granting a permit for the diversion of water from Lake Michigan to the Mississippi watershed, if lawful

in any case, is to be based upon the authority of Congress to control and regulate navigation, and not upon a consideration of local health conditions nor other extraneous considerations which are neither national in scope nor directly concerned with navigation itself.

Sixteenth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. IX as follows:

> "That the Congress of the United States is without power to authorize the abstraction and transfer of the waters of the Great Lakes and St. Lawrence watershed to or for the benefit of the Mississippi watershed."

Seventeenth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. X as follows:

> "That the Permit of March 3, 1925, is *ultra vires* and void and constitutes no authority for the abstraction of the waters of the Great Lakes-St. Lawrence system by the State of Illinois and the Sanitary District of Chicago."

Eighteenth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XI as follows:

> "That the Permit of March 3, 1925, does not purport to authorize the abstraction of the waters of the Great Lakes-St. Lawrence system, and does not undertake to authorize the invasion or injury of the property and rights of the peoples of the complainant State of Michigan or the proprietary or quasi-sovereign rights of said state."

Nineteenth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XII as follows:

> "That the State of Illinois and the Sanitary District of Chicago, by their acts of which complaint is made, have unlawfully interfered and are unlawfully interfering with and placing a burden upon the freedom of interstate commerce to the injury of the complainant State of Michigan and the peoples of said state."

Twentieth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XIII as follows:

> "All portions of the Act of the Legislature of Illinois approved May 29, 1889, and the Illinois Acts amendatory thereof and supplementary thereto, which purport to authorize and require the Sanitary District of Chicago to abstract the waters of the Great Lakes-St. Lawrence watershed, are unconstitutional and void under the Constitution of the United States and *ultra vires* and inoperative as affecting the rights of the complainant State of Michigan."

Twenty-first: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XIV as follows:

> "That the State of Illinois was and is without power to appropriate and abstract the waters of the Great Lakes-St. Lawrence system to the injury of the complainant State of Michigan or its peoples."

Twenty-second: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XV as follows:

"That neither the Congress of the United States nor the Secretary of War, by means of the Permit of March 3, 1925, or any prior permit, has appropriated or attempted to appropriate any of the waters of the Great Lakes-St. Lawrence system for navigation purposes in the Des Plaines, Illinois, or Lower Mississippi River."

Twenty-third: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XVI as follows:

"That the State of Illinois and the Sanitary District of Chicago, by their acts of which complaint is made, have seriously injured, are seriously injuring and are threatening further substantial injury to the value of the property, to the prosperity and to the welfare of large numbers of the peoples of the complainant State of Michigan, of which said state is guardian as *parens patriae* of its people."

Twenty-fourth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XVII as follows:

"That the State of Illinois and the Sanitary District of Chicago, by their acts of which complaint is made, have substantially injured, are substantially injuring and are threatening further substantial injury to the proprietary rights and the quasi-sovereign rights of the complainant State of Michigan."

Twenty-fifth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XVIII as follows:

"The State of Michigan in its proprietary capacity, and in its governmental capacity representing the people who own lands bordering on the connect-

ing waterways between the Great Lakes, within said state, has riparian rights in and upon said waters, which riparian rights are property, which property is being taken and will continue to be taken, without due process of law and without just compensation, in violation of the fifth and fourteenth amendments to the Constitution of the United States, by the lowering of such waters, by reason of the permanent abstraction and diversion of the water of Lake Michigan by defendants, through the Chicago Sanitary Canal."

Twenty-sixth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of Law No. XIX as follows:

"Neither the Congress of the United States in the exercise of its power to regulate commerce, nor any governmental official of the United States, has any power or authority to authorize or consent to a lowering of the waters of the Great Lakes, to the injury, invasion or destruction of complainant's riparian rights in or upon said waters."

Twenty-seventh: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XX as follows:

"Neither the State of Illinois, nor the Sanitary District of Chicago, in the exercise of the police power, has any right, power and authority, to lower the waters of the Great Lakes, and the connecting waterways between the same, to the injury, or destruction of complainant's riparian property rights, without due process of law and without just compensation."

Twenty-eighth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XXI as follows:

"Neither the power of Congress to regulate commerce, nor the police power of the State of Illinois, may be exercised in violation of the fifth and fourteenth amendments of the Constitution of the United States; such powers must be exercised within the limits of the Constitution of the United States, and not in violation of those limits."

Twenty-ninth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XXV as follows:

"The proprietary and sovereign rights of the State of Michigan to the unappropriated waters, submerged land and land laid bare by the recession of the waters of the Great Lakes, is property which the State of Michigan may use, protect and dispose of according to its own policy, subject only to the paramount right of the Congress of the United States to use and utilize said waters and submerged lands in the regulation of commerce."

Thirtieth: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XXVI as follows:

"Neither the State of Illinois nor the Sanitary District of Chicago has any power or authority to lower the waters of the Great Lakes within the limits of the territorial boundaries of the State of Michigan; or to withdraw and abstract the waters of Lake Michigan so that a lowering of such waters within the territorial boundaries of the State of Michigan is a necessary result of the acts of said State of Illinois and the Sanitary District of Chicago."

Thirty-first: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XXVII as follows:

"The lowering of the waters of the Great Lakes within the territorial limits of the State of Michigan by the State of Illinois and the Sanitary District of Chicago is and constitutes a taking of the property of the State of Michigan without due process of law, and without just compensation."

Thirty-second: It excepts to the failure of the Special Master to find in accordance with its proposed conclusion of law No. XXVIII as follows:

"That the complainant State of Michigan is entitled to a decree enjoining the State of Illinois and the Sanitary District of Chicago, their employees, agents, attorneys and servants, from abstracting any of the waters of the Great Lakes-St. Lawrence system through the Chicago Drainage Canal and its auxiliary channels, or through or by means of any other method, device or agency."

Thirty-third: It excepts to the failure of the Special Master to find and recommend a decree in accordance with complainant's proposed recommendations for a decree as follows:

"This cause coming on to be heard upon the report of the Special Master, Charles Evans Hughes, Esq., to whom it was referred to take the evidence and to report the same to the Court with his findings of fact, conclusions of law and recommendations for a decree, and also upon the exceptions taken to said report on the part of the plaintiff and defendants, and said cause having been argued by counsel for the respective parties and due deliberation had thereon, it is:

Ordered, adjudged and decreed as follows:

(1) That each and all of the exceptions taken to said Special Master's report by either or any of the parties are overruled.

(2) That the defendants, State of Illinois and the Sanitary Districts of Chicago, their employees, servants, attorneys and agents be and they hereby are ordered to cease, desist and refrain from abstracting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels, or through or by means of any other method, device or agency.

(3) That the Complainant have and recover from the Sanitary District of Chicago and the State of Illinois its costs and disbursements herein to be taxed and noted at the foot of this decree."

Thirty-fourth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor, wherein he finds as the SECOND conclusion of law (Master's Report, p. 148):

"My conclusion is that the action of Illinois in diverting water from Lake Michigan through the drainage canal of the Sanitary District was, and is, unlawful unless validly permitted by Congress either directly or through the action of the Secretary of War."

instead of finding that the action of Illinois in diverting water from Lake Michigan through the drainage canal of the Sanitary District was, and is, unlawful, and that no authority exists on the part of Congress either directly, or indirectly through the action of the Secretary of War, to permit such diversion of water without observing the requirements of due process of law and without making just compensation, in violation of the Federal Constitution.

Thirty-fifth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and

the reasons assigned therefor wherein he finds as the THIRD conclusion of law that Congress has power to control the diversion of water from Lake Michigan both as to whether any diversion should be permitted and to what extent (Master's Report, pps. 148-171), instead of finding that Congress has no power to permit the diversion of water from Lake Michigan through the drainage canal of the Sanitary District, because:

1. Such diversion constitutes a taking of complainant's property without due process of law and without just compensation, in violation of the Fifth Amendment.

2. Congress could not authorize the diversion from the Great Lakes-St. Lawrence watershed to the Mississippi watershed.

3. Such diversion would constitute a preference of the ports of one state over those of another, in violation of Article I, Section 9, Clause 6, of the Federal Constitution.

4. The power of Congress extends to the protection and improvement of navigation but not to its destruction or to the creation of obstructions to navigable capacity.

5. Congress has no authority under the commerce clause of the Constitution to permit a diversion of water from Lake Michigan for purposes of sanitation and development of water power, rather than of navigation.

Thirty-sixth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor wherein he finds as the FIFTH conclusion of law (Master's Report, pps. 176-191) that Congress has conferred authority upon the Secretary of War to regulate the diversion, provided he acts in reasonable relation to the purpose of his delegated authority and not arbitrarily, instead of finding that the diversion or abstraction of these waters creates an obstruction to the navigable capacity of the waters of Lake Michigan and the Great Lakes-St. Lawrence waterways, which has not been "affirmatively authorized by Congress," and that the Secretary of War is without authority to permit or regulate any such diversion of water from Lake Michigan.

Thirty-seventh: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor wherein he finds as the SIXTH conclusion of law (Master's Report, pps. 191-196) that the Permit of March 3, 1925, is valid and effective according to its terms, instead of finding that the said Permit was without authority and at most expressed the assent of the Federal Government so far as concerns the public rights of navigation but did not grant property belonging to complainant so that the water of Lake Michigan could lawfully be diverted without its consent, nor without due process of law and after just compensation.

Thirty-eighth: It excepts to the finding of the Special Master heretofore filed in the above entitled cause and the reasons assigned therefor wherein he finds the "Summary of Conclusions" (Master's Report, p. 196), and particularly the following:

" * * * * * * * *

2. That the State of Illinois and the Sanitary District of Chicago have no authority to make or continue the diversion in question without the consent of Congress.

3. That Congress has power to regulate the diversion, that is, to determine whether and to what extent it should be permitted.

* * * * * * * * *

5. That Congress has conferred authority upon the Secretary of War to regulate the diversion, provided he acts in reasonable relation to the purpose of his delegated authority and not arbitrarily.

6. That the Permit of March 3, 1925, is valid and effective according to its terms, the entire control of the diversion remaining with Congress."

Thirty-ninth: It excepts to the recommendations for final decree made by the Special Master contained in his report heretofore made and filed in said cause as follows: (Master's Report, p. 197),

"In the light of these conclusions, the bill, in my opinion, should be dismissed. I think, however, that if a situation should develop in which the defendants were seeking to create or continue a withdrawal of water from Lake Michigan without the sanction of Congress or of administrative officers acting under its authority, the complainant States have such an interest as would entitle them to bring a bill to restrain such action.

"I therefore recommend that the bill be dismissed without prejudice to the right of the complainants to institute suit to prevent a diversion of water from Lake Michigan in case such diversion is made or attempted without authority of law."

And the State of Michigan, complainant in original cause No. 11 herein, appeals from and excepts to the findings and report of Charles Evans Hughes, Esq., the Special Master, to the Supreme Court of the United States, and prays for a correction of the errors of the Special Master hereinbefore specified.

WILLIAM W. POTTER,
Attorney General.
ANDREW B. DOUGHERTY,
Special Assistant Attorney General.
WILBER M. BRUCKER,
Assistant Attorney General.
ARTHUR E. KIDDER,
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